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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 10 2 2006

at 2 o'clock and 30 min P M
SUE BEITIA, CLERK

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GMP HAWAII, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SYNAGRO TECHNOLOGIES, INC.,

Plaintiff,

CIVIL NO. CV04-00509 SPK LEK

**DEFENDANT GMP HAWAII,
INC.'S OBJECTIONS TO BILL
OF COSTS FILED HEREIN ON**

(caption continued on next page)

vs.
GMP HAWAII, INC.,

Defendant.

**APRIL 21, 2006;
CERTIFICATE OF SERVICE**

**DEFENDANT GMP HAWAII, INC.'S
OBJECTIONS TO BILL OF COSTS FILED HEREIN ON APRIL 21, 2006**

Defendant GMP HAWAII, INC. ("GMP"), by and through its co-counsel, CASE LOMBARDI & PETTIT, hereby submits the following objections to Plaintiff SYNAGRO TECHNOLOGIES, INC.'S ("Synagro") Bill of Costs filed herein on April 21, 2006. Synagro's Bill of Costs should be denied for the following reasons:

1. Synagro's Bill of Costs, in its entirety, is untimely pursuant to Local Rule 54.2(b). Synagro claims that it is the "prevailing party in whose favor judgment was entered" herein on January 11, 2006 by way of the Court's Summary Judgment Order. If it is indeed the prevailing party as of that date, Synagro waived such costs when it did not file a Bill of Costs by February 10, 2006 (within thirty days of the alleged entry of judgment);

2. The Stipulation and Order to (1) Vacate Trial Date, Trial-Related Deadlines, (2) Set Briefing on Plaintiff's Motion for Attorneys' Fees and Costs, and (3) Dismiss Claims, filed herein on March 30, 2006, does not address nor include an "agreement regarding entitlement to taxation of

costs,”¹ and according to Local Rule 54.2(a), Synagro must therefore bear its own taxable costs as a result of settling the action; and

3. The claimed “fees for the exemplification and copies of papers necessary for use in the case (at actual cost or at \$.10 per page),” which are “photocopies from in-house photocopier (at \$.10 per page),” totaling \$2,835.80, are unreasonable and/or not necessarily incurred, and are not stated with any “specificity” as required by Local Rules 54.2(c) and 54.2(f)(4). Exhibit “A” consists of billings for these “copies,” and nothing in the Motion, the attached Memorandum, the Declaration of Paul Alston, nor Exhibit “A” specify the documents copied, the number of pages copied, or the use of or intended purpose for the items copied.² Such claimed costs should therefore be denied.

¹ Because the Stipulation does not address taxation of costs by the clerk, these objections are being submitted in accordance with the time limits set forth in Local Rule 54.2(d). However, should the Court decide to address Synagro’s Bill of Costs for taxable costs pursuant to the Court’s Minute Order regarding Synagro’s Motion for Attorneys’ Fees and Related Non-Taxable Expenses, filed herein on April 25, 2006, GMP will further submit a Memorandum in Opposition to the instant Bill of Costs by or on May 19, 2006 in accordance therewith.

² “The burden is on the party seeking reimbursement for photocopying costs to show that the photocopied items were necessary; if that party fails to meet that burden, the court should not award costs for those items.” *Place v. Abbott Labs., Inc.*, 1999 U.S. Dist. LEXIS 11900, at *11, 1999 WL 569580, at *3 (N.D. Ill. July 30, 1999). See also *NLFC, Inc. v. Devcom Mid-America*, 916 F. Supp. 751, 763 (N.D. Ill. 1995) (“[W]hen the Court is unable to determine whether the copies in question were reasonably necessary for use in the case, the claim for such costs should be denied”).

Based upon the foregoing, GMP respectfully requests that the Clerk and this Court deny Synagro's Bill of Costs.

DATED: Honolulu, Hawaii, MAY 02 2006.

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MICHAEL M. MARSH
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JOHN D. ZALEWSKI
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Co-Counsel for Defendant
GMP HAWAII, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SYNAGRO TECHNOLOGIES, INC.,

Plaintiff,

vs.

GMP HAWAII, INC.,

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CIVIL NO. CV04-00509 SPK LEK

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true and correct copy of the foregoing was duly served upon the parties listed below at their last known addresses by U.S. Mail, postage pre-paid on the date stated below:

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GMP HAWAII, INC.

DATED: Honolulu, Hawaii, MAY 02 2006

A handwritten signature in cursive script, appearing to read "Michael M. Marsh", written over a horizontal line.

MICHAEL M. MARSH
TED N. PETTIT
JOHN D. ZALEWSKI
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Co-Counsel for Defendant
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